

CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Airport

AGENDA DATE: October 23, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E./780-4793

DISTRICT(S) AFFECTED: All

**SUBJECT:**

Resolution to authorize the City Manager to sign a Lessor's Acknowledgement of Assignment of the Butterfield Trail Industrial Park Lease by and between the City of El Paso & Buzz Oates LLC ("Assignor") - Buzz Oates Development Limited Partnership ("Assignor"); and Buzz Oates El Paso LLC ("Assignee") regarding the following described property:

Lots 3, 4, and 5, Block 3, Butterfield Trail Industrial Park Unit One, Replat "A", and Lot 2, Block 3, Butterfield Trail Industrial Park Unit One, Replat "C", City of El Paso, El Paso County Texas, and municipally known and numbered as 5, 7, 9, & 11 Founders, El Paso, Texas.

**BACKGROUND / DISCUSSION:**

The City of El Paso entered into a Lease with Mark III Industrial Developer's effective November 1, 1991 for a term of thirty-five (35) years with two (2) additional ten (10) year Options.

On January 12, 1993, the Lease was assigned to Mark III/Mueller, by that Assignment with an effective date of January 1, 1993;

On March 5, 2002, Lessor approved Lessee's assignment pursuant to an Agreement of Assignment and Assumption of Leases dated September 1, 2001 to Marvin L. Oates, as trustee of the Marvin L. Oates Trust dated March 7, 1995, an undivided 67.5% interest, Mueller Capital Plaza-Sacramento, Hawaii Limited Partnership, an undivided 25% interest, Wayne Windle, an undivided 3.75% interest, and Katherine Alday, an undivided 3.75% interest;

On October 14, 2003, Lessor Approved a Lessor's Approval of Assignment of collective 32.4% partial undivided interests of Mueller Capital Plaza-Sacramento, Hawaii Limited Partnership, Wayne Windle, and Katherine Alday in the Lease to be divided equally between Buzz Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995. This assignment resulted in Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995, owning an 83.75% undivided interest in the Lease and Buzz Oates Development Limited Partnership owning a 16.25% undivided interest in the Lease;

On April 6, 2010, Lessor approved a Lessor's Approval of Assignment by Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995 of all of his 83.75% undivided interest in the Lease to Buzz Oates LLC, a California Limited liability company, which resulted in Buzz Oates LLC owning 83.75% undivided interest in the Lease and Buzz Oates Development Limited Partnership owning a 16.25% undivided interest in the Lease (collectively "Assignor"),

Assignor now desires to assign all of its one hundred (100%) interest in the Lease to Buzz Oates LLC ("Assignee") with all the terms and conditions remaining the same. The present annual rent is \$141,187.56 with 14 years, plus an additional 20 Option years. Remaining total on the term is 34 years. The property is located in Butterfield Trail Industrial Park and contains approximately 732,397 square feet of land.

**PRIOR COUNCIL ACTION:**

1/22/93, 3/5/02, 10/14/03, 4/6/10

**AMOUNT AND SOURCE OF FUNDING:**

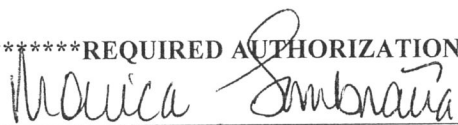
This is a revenue generating lease.

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lessor Approval of Assignment by and between the City of El Paso, Buzz Oates LLC and Buzz Oates Development Limited Partnership; and Buzz Oates El Paso LLC covering the following described property:

Lots 3, 4 and 5, Block 3, Butterfield Trail Industrial Park Unit One, Replat "A", and lot 2, Block 3, Butterfield Trail Industrial Park Unit One Replat "C", municipally known and numbered as #5, 7, 9 & 11 Founders Blvd., City of El Paso, El Paso County, Texas.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2012.

### CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

### ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

### APPROVED AS TO FORM:



\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

### APPROVED AS TO CONTENT:



\_\_\_\_\_  
Monica Lombraña, A.A.E.  
Director of Aviation

STATE OF TEXAS           §  
                                     §       LESSOR'S APPROVAL OF ASSIGNMENT  
COUNTY OF EL PASO   §

**WHEREAS**, the City of El Paso ("Lessor") entered into a Butterfield Trail Industrial Park Lease dated May 12, 1992 (effective November 1, 1991 ("Lease"), between Lessor and Mark III Industrial Developers; for the property legally described as:

Lots 3, 4 and 5, Block 3, Butterfield Trail Industrial Park  
Unit One, Replat "A", and lot 2, Block 3, Butterfield Trail  
Industrial Park Unit One Replat "C", municipally known  
and numbered as #5, 7, 9 & 11 Founders Blvd., City of El  
Paso, El Paso County, Texas ("Premises").

**WHEREAS**, effective January 1, 1993, Lessor approved Mark III Industrial Developers' assignment all of its right, title and interest in the Lease to Mark III/Mueller, a Texas joint venture;

**WHEREAS**, on March 5, 2002, Lessor approved Lessee's assignment pursuant to an Agreement of Assignment and Assumption of Leases dated September 1, 2001 to Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995 (an undivided 67.5% interest), Mueller Capital Plaza-Sacramento, Hawaii Limited Partnership, (an undivided 25% interest), Wayne Windle, (an undivided 3.75% interest), and Katherine Alday (an undivided 3.75% interest);

**WHEREAS**, on Oct. 14, 2003, Lessor approved a Lessor's Approval of Assignment of the collective 32.4% partial undivided interests of Mueller Capital Plaza-Sacramento, Hawaii Limited Partnership, Wayne Windle, and Katherine Alday in the Lease to be divided equally between Buzz Oates Development Limited Partnership, a California limited partnership and Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995. This assignment resulted in Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995 owning an 83.75% undivided interest in the Lease and Buzz Oates Development Limited Partnership owning a 16.25% undivided interest in the Lease;

**WHEREAS**, effective April 6, 2010, Lessor approved the assignment by Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995 of all of his 83.75% undivided interest in the Lease to Buzz Oates LLC, a California Limited liability company, which resulted in Buzz Oates LLC owning an 83.75% undivided interest in the Lease and Buzz Oates Development Limited Partnership owning a 16.25% undivided interest in the Lease (collectively "Assignor");

**WHEREAS**, Assignor now desires to assign all of its one hundred percent (100%) interest in the Lease;

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Buzz Oates El Paso LLC, a California limited liability company ("Assignee"), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.
2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.
3. **GUARANTOR.** Assignor guarantees payment of rent and other charges or fees due to the Lessor and shall remain fully liable for the prompt and complete performance of any and all obligations arising, or to arise, under the Lease.
4. **RATIFICATION OF LEASE.** Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.
5. **ADDRESS FOR NOTICE.** Notices to Assignee and Assignors shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNOR: Buzz Oates LLC  
8615 Elder Creek Road  
Sacramento, CA 95828  
Attn: Brian Marty, Esq.

ASSIGNEE: Buzz Oates El Paso LLC  
8615 Elder Creek Road  
Sacramento, CA 95828  
Attn: Brian Marty, Esq.

6. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee, Assignor, and Guarantor represent and warrant that they have the legal authority to bind the Assignee, Assignor or Guarantor, respectively, to the provisions of this Lessor's Approval of Assignment.
7. **NON-WAIVER.** The Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.

8. **EFFECTIVE DATE.** The Effective Date of this Lessor's Approval of Assignment will be Nov. 1, 2012.

APPROVED THIS \_\_\_\_ day of \_\_\_\_\_, 2012.

**LESSOR: CITY OF EL PASO**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
*Monica Lombraña*  
Monica Lombraña, A.A.E.  
Director of Aviation

**LESSOR'S ACKNOWLEDGEMENT**

THE STATE OF TEXAS   )  
  )  
COUNTY OF EL PASO   )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2012, by  
**Joyce A. Wilson as City Manager of the City of El Paso, Texas (Lessor).**

My Commission Expires:  
\_\_\_\_\_

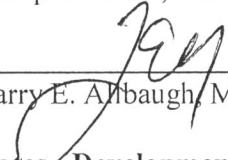
\_\_\_\_\_  
Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

**ASSIGNOR: Buzz Oates LLC**, a California limited liability company

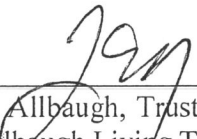
By: Oates Advisors LLC, a California limited liability company, Its Manager

By:   
Philip D. Oates, Manager

By:   
Larry E. Allbaugh, Manager

**Buzz Oates Development, L.P.**, a California limited partnership, Its Manager

By: Oates Associates Investors, LLC, a California limited liability company, Its General Partner

By:   
Larry E. Allbaugh, Trustee of the Larry and Laura Allbaugh Living Trust, Manager

Date: \_\_\_\_\_, 2012

[ASSIGNOR'S ACKNOWLEDGMENTS ON THE FOLLOWING PAGE]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT  
BUZZ OATES LLC (ASSIGNOR)

STATE OF CALIFORNIA )

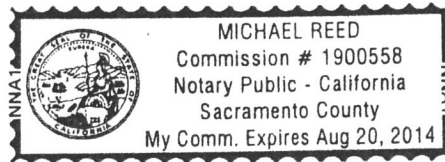
COUNTY OF SACRAMENTO )

On Sept. 27, 2012 before me, Michael Reed, Notary Public  
Date Name, Title of Officer-E.G., "Jane Doe, Notary Public"

personally appeared Philip D. Oates & Larry G. Aubrey  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that  
~~h/s~~he/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal.

[Signature] (SEAL)  
Notary Public Signature



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT  
BUZZ OATES DEVELOPMENT, L.P. (ASSIGNOR)

STATE OF CALIFORNIA )

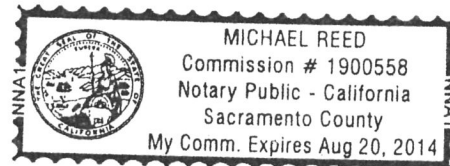
COUNTY OF SACRAMENTO )

On Sept. 27, 2012 before me, Michael Reed, Notary Public  
Date Name, Title of Officer-E.G., "Jane Doe, Notary Public"

personally appeared Larry G. Aubrey  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that  
~~h/s~~he/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal.

[Signature] (SEAL)  
Notary Public Signature



[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ASSIGNEE: Buzz Oates El Paso LLC, a  
California limited liability Company

By: Buzz Oates Development, L.P., a  
California limited partnership, Its Manager

By: Oates Associates Investors, LLC, a  
California limited liability company, Its  
General Partner

By:

*[Signature]*  
Larry E. Allbaugh, Trustee of  
the Larry and Laura Allbaugh  
Living Trust, Manager

Date: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**BUZZ OATES EL PASO LLC (ASSIGNEE)**

STATE OF CALIFORNIA )

COUNTY OF SACRAMENTO )

On Sept. 27, 2012 before me, Michael Reed, Notary Public  
Date Name, Title of Officer-E.G., "Jane Doe, Notary Public"

personally appeared LARRY E. ALLBAUGH  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that  
h/s/he/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal.

*[Signature]* (SEAL)  
Notary Public Signature

